

110TH CONGRESS
1ST SESSION

H. R. 2538

To amend the Immigration and Nationality Act to provide greater protections to domestic and foreign workers under the H-1B nonimmigrant worker program.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2007

Mr. PASCRELL (for himself, Mr. LATOURETTE, Mr. ROHRABACHER, and Ms. DELAURO) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide greater protections to domestic and foreign workers under the H-1B nonimmigrant worker program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Defend the American
5 Dream Act of 2007”.

6 **SEC. 2. WAGE DETERMINATION.**

7 (a) CHANGE IN MINIMUM WAGES.—Section
8 212(n)(1)(A) of the Immigration and Nationality Act (8
9 U.S.C. 1182(n)(1)(A)) is amended to read as follows:

1 “(A) The employer—

2 “(i) is offering and will offer during the
3 period of authorized employment to aliens ad-
4 mitted or provided status as an H-1B non-
5 immigrant wages that are at least—

6 “(I) the locally determined prevailing
7 wage level for the occupational classifica-
8 tion in the area of employment;

9 “(II) the median average wage for all
10 workers in the occupational classification
11 in the area of employment; or

12 “(III) the median wage for skill level
13 two in the occupational classification found
14 in the most recent Occupational Employ-
15 ment Statistics survey;

16 whichever is greatest, based on the best infor-
17 mation available as of the time of filing of the
18 application; and

19 “(ii) will provide working conditions for
20 such nonimmigrant that will not adversely af-
21 fect the working conditions of workers similarly
22 employed.

23 The wage determination methodology used under
24 clause (i) shall be submitted with the application.”.

1 (b) PROVISION OF W-2 FORMS.—Section 212(n)(1)
 2 of such Act (8 U.S.C. 1182(n)(1)) is amended by inserting
 3 after subparagraph (G) the following new subparagraph:

4 “(H) If the employer employed, in such pre-
 5 vious period as the Secretary shall specify, one or
 6 more H-1B nonimmigrants, the application shall be
 7 accompanied by the Internal Revenue Service Form
 8 W-2 Wage and Tax Statement filed by the employer
 9 with respect to such nonimmigrants for such pe-
 10 riod.”.

11 (c) EFFECTIVE DATE.—The amendments made by
 12 this section shall apply to applications filed on or after
 13 the date of the enactment of this Act.

14 **SEC. 3. GOOD FAITH RECRUITMENT REQUIREMENT.**

15 (a) EXTENDING TIME PERIOD FOR NO DISPLACE-
 16 MENT.—Section 212(n) of the Immigration and Nation-
 17 ality Act (8 U.S.C. 1182(n)) is amended—

18 (1) in paragraph (1)(E)(i), by striking “90
 19 days” and inserting “180 days” each place it ap-
 20 pears; and

21 (2) in paragraph (2)(C)(iii), in the matter be-
 22 fore subclause (I), by striking “90 days” and insert-
 23 ing “180 days” each place it appears.

24 (b) REQUIRING ACTIVE RECRUITMENT.—Section
 25 212(n)(1)(G)(i)(I) of such Act (8 U.S.C.

1 1182(n)(1)(G)(i)(I)) is amended by inserting “actively”
2 before “recruit”.

3 (c) PROHIBITION OF OUTPLACEMENT.—Section
4 212(n) of such Act (8 U.S.C. 1182(n)) is amended—

5 (1) by amending subparagraph (F) of para-
6 graph (1) to read as follows:

7 “(F) The employer shall not place, out-source,
8 lease, or otherwise contract for the placement of an
9 alien admitted or provided status as an H–1B non-
10 immigrant with another employer, regardless of
11 whether or not such other employer is an H–1B-de-
12 pendent employer.”; and

13 (2) by striking subparagraph (E) of paragraph
14 (2).

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to applications filed on or after
17 the date of the enactment of this Act, except that the
18 amendments made by subsection (a) shall not apply to dis-
19 placements for periods occurring more than 90 days before
20 such date.

21 **SEC. 4. H-1B EMPLOYER REQUIREMENTS.**

22 (a) PUBLIC LISTING OF AVAILABLE POSITIONS.—

23 (1) LISTING OF AVAILABLE POSITIONS.—Sec-
24 tion 212(n)(1)(C) of such Act is amended—

1 (A) in clause (i), by striking “(i) has pro-
2 vided” and inserting the following:

3 “(ii)(I) has provided”;

4 (B) by redesignating clause (ii) as sub-
5 clause (II); and

6 (C) by inserting before clause (ii), as re-
7 designated, the following:

8 “(i) has advertised the job availability on
9 the list described in paragraph (6), for at least
10 30 calendar days; and”.

11 (2) LIST MAINTAINED BY THE DEPARTMENT OF
12 LABOR.—Section 212(n) of such Act, is amended by
13 adding at the end the following:

14 “(6)(A) Not later than 90 days after the date of the
15 enactment of this paragraph, the Secretary of Labor shall
16 establish a list of available jobs, which shall be publicly
17 accessible without charge—

18 “(i) on a website maintained by the Department
19 of Labor, which website shall be searchable by—

20 “(I) the name, city, State, and zip code of
21 the employer;

22 “(II) the date on which the job is expected
23 to begin;

24 “(III) the title and description of the job;
25 and

1 “(IV) the State and city (or county) at
2 which the work will be performed; and

3 “(ii) at each 1-stop center created under the
4 Workforce Investment Act of 1998 (Public Law
5 105–220).

6 “(B) Each available job advertised on the list shall
7 include—

8 “(i) the employer’s full legal name;

9 “(ii) the address of the employer’s principal
10 place of business;

11 “(iii) the employer’s city, State and zip code;

12 “(iv) the employer’s Federal Employer Identi-
13 fication Number;

14 “(v) the phone number, including area code and
15 extension, as appropriate, of the hiring official or
16 other designated official of the employer;

17 “(vi) the e-mail address, if available, of the hir-
18 ing official or other designated official of the em-
19 ployer;

20 “(vii) the wage rate to be paid for the position
21 and, if the wage rate in the offer is expressed as a
22 range, the bottom of the wage range;

23 “(viii) whether the rate of pay is expressed on
24 an annual, monthly, biweekly, weekly, or hourly
25 basis;

1 “(ix) a statement of the expected hours per
2 week that the job will require;

3 “(x) the date on which the job is expected to
4 begin;

5 “(xi) the date on which the job is expected to
6 end, if applicable;

7 “(xii) the number of persons expected to be em-
8 ployed for the job;

9 “(xiii) the job title;

10 “(xiv) the job description;

11 “(xv) the city and State of the physical location
12 at which the work will be performed; and

13 “(xvi) a description of a process by which a
14 United States worker may submit an application to
15 be considered for the job.

16 “(C) The Secretary of Labor may charge a nominal
17 filing fee to employers who advertise available jobs on the
18 list established under this paragraph to cover expenses for
19 establishing and administering the requirements under
20 this paragraph.

21 “(D) The Secretary may promulgate rules, after no-
22 tice and a period for comment—

23 “(i) to carry out the requirements of this para-
24 graph; and

1 “(ii) that require employers to provide other in-
2 formation in order to advertise available jobs on the
3 list.”.

4 (3) EFFECTIVE DATE.—Paragraph (1) shall
5 take effect for applications filed at least 30 days
6 after the creation of the list described in paragraph
7 (2).

8 (b) H-1B NONIMMIGRANTS NOT ADMITTED FOR
9 JOBS ADVERTISED OR OFFERED ONLY TO H-1B NON-
10 IMMIGRANTS.—Section 212(n)(1) of such Act, as amended
11 by this Act, is further amended—

12 (1) by inserting after subparagraph (H) the fol-
13 lowing:

14 “(I)(i) The employer has not advertised the
15 available jobs specified in the application in an ad-
16 vertisement that states or indicates that—

17 “(I) the job or jobs are only available to
18 persons who are or who may become H-1B
19 nonimmigrants; or

20 “(II) persons who are or who may become
21 H-1B nonimmigrants shall receive priority or a
22 preference in the hiring process.

23 “(ii) The employer has not only recruited per-
24 sons who are, or who may become, H-1B non-
25 immigrants to fill the job or jobs.”; and

1 (2) in the undesignated paragraph at the end,
2 by striking “The employer” and inserting the fol-
3 lowing:

4 “(J) The employer”.

5 (c) LIMIT ON PERCENTAGE OF H-1B EMPLOYEES.—
6 Section 212(n)(1) of such Act, as amended by this section,
7 is further amended by inserting after subparagraph (J)
8 the following:

9 “(K) If the employer employs not less than 50
10 employees in the United States, not more than 50
11 percent of such employees are H-1B non-
12 immigrants.”.

13 (d) IMMIGRATION DOCUMENTS.—Section 204 of such
14 Act (8 U.S.C. 1154) is amended by adding at the end the
15 following:

16 “(l) EMPLOYER TO SHARE ALL IMMIGRATION PA-
17 PERWORK EXCHANGED WITH FEDERAL AGENCIES.—Not
18 later than 10 working days after receiving a written re-
19 quest from a former, current, or future employee or bene-
20 ficiary, an employer shall provide the employee or bene-
21 ficiary with the original (or a certified copy of the original)
22 of all petitions, notices, and other written communication
23 exchanged between the employer and the Department of
24 Labor, the Department of Homeland Security, or any
25 other Federal agency that is related to an immigrant or

1 nonimmigrant petition filed by the employer for the em-
 2 ployee or beneficiary.”.

3 **SEC. 5. REMOVAL OF EXEMPTION FROM H-1B NUMERICAL**
 4 **LIMITATION FOR CERTAIN ALIENS.**

5 (a) IN GENERAL.—Section 214(g)(5) of the Immi-
 6 gration and Nationality Act (8 U.S.C. 1184(g)(5)) is
 7 amended—

8 (1) in subparagraph (A), by adding “or” after
 9 the semicolon;

10 (2) in subparagraph (B), by striking “; or” and
 11 inserting a period; and

12 (3) by striking subparagraph (C).

13 (b) EFFECTIVE DATE.—The amendments made by
 14 subsection (a) shall apply to the issuance of a visa (or
 15 other provision of status) under section
 16 101(a)(15)(H)(i)(B) of the Immigration and Nationality
 17 Act (8 U.S.C. 1101(a)(15)(H)(i)(B)) on or after the first
 18 day of the first fiscal year beginning after the date of the
 19 enactment of this Act.

20 **SEC. 6. REQUIREMENT OF A DEGREE FROM CERTAIN INSTI-**
 21 **TUTIONS FOR H-1B SPECIALITY OCCUPATION**
 22 **NONIMMIGRANTS.**

23 (a) IN GENERAL.—Section 214(i)(2) of the Immigra-
 24 tion and Nationality Act (8 U.S.C. 1184(i)(2)) is amend-
 25 ed—

1 (1) in subparagraph (A), by adding “or” at the
2 end;

3 (2) in subparagraph (B), by inserting “, from
4 a bona fide educational institution in the United
5 States or from an educational institution that is at
6 least equivalent to such an institution in the United
7 States,” after “paragraph (1)(B)”;

8 (3) in subparagraph (B), by striking “, or” and
9 inserting a period; and

10 (4) by striking subparagraph (C).

11 (b) EFFECTIVE DATE.—The amendments made by
12 subsection (a) shall apply to applications filed on or after
13 the date of the enactment of this Act.

14 **SEC. 7. LABOR ENFORCEMENT.**

15 (a) CENTRALIZATION OF ADMINISTRATIVE AND EN-
16 FORCEMENT FUNCTIONS.—Section 212(n)(2) of the Im-
17 migration and Nationality Act (8 U.S.C. 1182(n)(2)) is
18 amended by adding at the end the following new subpara-
19 graph:

20 “(J) The Secretary shall be responsible under this
21 paragraph for investigations of wage complaints, as well
22 as investigations of allegations of fraud in the filing of
23 applications under this subsection.”.

24 (b) AUDITS.—Section 212(n)(2)(A) of such Act (8
25 U.S.C. 1182(n)(2)(A)) is amended by adding at the end

1 the following: “In addition, the Secretary may conduct
 2 surveys of the level of compliance by employers with the
 3 provisions and requirements of this subsection and may
 4 conduct annual compliance audits in the case of employers
 5 that employ H–1B nonimmigrants. In the case of an em-
 6 ployer that employs H–1B nonimmigrants that represent
 7 15 percent or more of the total number of individuals em-
 8 ployed by the employer, the Secretary shall conduct annual
 9 compliance audits of such employer.”.

10 (c) PENALTIES.—Section 212(n)(2)(C) of such Act
 11 is amended—

12 (1) in clause (i)(I), by striking “\$1,000” and
 13 inserting “\$2,000”;

14 (2) in clause (ii)(I), by striking “\$5,000” and
 15 inserting “\$10,000”; and

16 (3) in clause (vi)(III), by striking “\$1,000” and
 17 inserting “\$2,000”.

18 **SEC. 8. WHISTLEBLOWER PROTECTIONS.**

19 Section 212(n)(2)(C)(iv) of the Immigration and Na-
 20 tionality Act (8 U.S.C. 1182(n)(2)(C)(iv)) is amended—

21 (1) by inserting “take, fail to take, or threaten
 22 to take or fail to take, a personnel action, or” before
 23 “to intimidate”; and

24 (2) by adding at the end the following: “An em-
 25 ployer that violates this clause shall be liable to the

1 employees harmed by such violation for lost wages
2 and benefits.”.

3 **SEC. 9. APPLICATION OF NONDISPLACEMENT REQUIRE-**
4 **MENT TO ALL H-1B EMPLOYERS.**

5 (a) IN GENERAL.—Section 212(n)(1)(E)(ii) of the
6 Immigration and Nationality Act (8 U.S.C.
7 1182(n)(1)(E)(ii)) is amended by striking “an H-1B de-
8 pendent employer (as defined in paragraph (3))” and in-
9 serting “an employer that employs H-1B non-
10 immigrants”.

11 (b) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to applications filed on or after
13 the date of the enactment of this Act.

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